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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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AXCESS GLOBAL SCIENCES, LLC,

Plaintiff,

vs.

LIGHTNING LABS LLC; VAAD  
HOLDINGS LLC dba FABER GOODS;  
SUPERIOR QUALITY PRODUCTS, LLC;  
LANBRI SHOPS LLC dba ONLINE GREAT  
DEALS, S.O LABS LLC, and ARK LABS  
LLC,

Defendants.

Case No: 2:23-cv-00189-HCN

COMPLAINT FOR TRADEMARK  
INFRINGEMENT, UNFAIR  
COMPETITION, FALSE  
ADVERTISING, PATENT  
INFRINGEMENT, AND BREACH OF  
CONTRACT

JURY TRIAL DEMANDED

Judge: Howard C. Nielson, Jr.

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Plaintiff Axxess Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges as follows against Defendants Lightning Labs LLC, VAAD Holdings LLC dba Faber Goods, Superior Quality Products, LLC, Lanbri Shops LLC dba Online Great Deals, S.O Labs LLC and ARK Labs, LLC (collectively, the “Defendants”).

## NATURE OF THE CLAIMS

1. This is an action for trademark infringement, unfair competition, false advertising, patent infringement, and breach of contract. The Defendants sell products that infringe the Plaintiff's GOBHB registered trademark and violate Section 43(a) of the Lanham Act:



2. The Defendants falsely advertise their counterfeit products as containing GOBHB branded beta-hydroxybutyrate (“BHB”) exogenous ketones when those products actually do not contain GOBHB branded ingredients or BHB exogenous ketones.



3. In addition, Defendants sell and distribute other products that infringe U.S. Patent Nos. 11,020,362 and 11,241,403 (the “Asserted Patents”) each owned by the Plaintiff AGS and attached hereto as Exhibits C and D.

4. The Defendants are on notice of their infringement of Plaintiff’s patents and signed a binding settlement agreement on December 17, 2021, wherein Defendants agreed to stop selling any products that infringed any patent owned by the Plaintiff. The Defendants now disregard the Agreement and breach its terms.

### **THE PARTIES**

5. Plaintiff Axxess Global Sciences, LLC (“AGS”) is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

6. Defendant Lightning Labs LLC (“Lightning Labs”) is a Florida limited liability company with a principal place of business at 4800 Lyons Technology Parkway #4, Coconut Creek, Florida 33073.

7. Defendant VAAD Holdings LLC (“VAAD”) dba Faber Goods (“Faber”) is a Florida limited liability company with a principal place of business at 4800 Lyons Technology Parkway #4, Coconut Creek, Florida 33073.

8. Defendant Superior Quality Products LLC (“SQP”) is an inactive Florida limited liability company with a principal place of business at 4800 Lyons Technology Parkway #4, Coconut Creek, Florida 33073.

9. Defendant Lanbri Shops LLC dba Online Great Deals (“Lanbri”) is a Florida limited liability company with a principal place of business at 4800 Lyons Technology Parkway #4, Coconut Creek, Florida 33073.

10. Defendant S.O Labs LLC (“S.O Labs”) is an unknown corporate entity with a principal place of business at 7376 Granada Way, Margate, Florida 33063. On information and belief, S.O Labs is a distribution partner and/or alter ego of Lightning Labs, VAAD, SQP, and Lanbri.

11. Defendant ARK Labs LLC (“ARK”) is an unknown corporate entity with a principal place in Boca Raton, Florida. On information and belief, ARK is a distribution partner and/or alter ego of Lightning Labs, VAAD, SQP, and Lanbri.

### **JURISDICTION**

12. This matter arises under the patent and trademark laws of the United States, Title 35 United States Code, §§ 1 et seq. Accordingly, the Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks). In addition, the Court has supplemental jurisdiction over the Plaintiff’s claims for breach of contract pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

13. On information and belief, the Defendants are commonly owned corporations. The Defendants executed a “Settlement Agreement and Release” with the Plaintiff (the “Agreement”) dated December 17, 2021, Exhibit A, wherein the Defendants agreed to certain conditions regarding their infringement of Plaintiff’s patents. In particular, the Defendants agreed to stop selling products that infringed the Plaintiff’s patents. The Agreement was signed by Lightning Labs for the benefit of all Defendants. The Agreement provided for jurisdiction and venue in the State of Utah “for the resolution of any dispute regarding this Agreement . . . .” Most of the Defendants also share the same principal place of business (4800 Lyons Technology Parkway #4,

Coconut Creek, Florida 33073), and have common agents, officers, and directors, including Valentino Gifford and Adam Fox.

14. This Court has personal jurisdiction over each of the Defendants because they have consented to personal jurisdiction in this district. *See* Exhibit A, § 3.10. The Court may exercise jurisdiction over a Defendant where the Defendant consents to personal jurisdiction. *See [Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee](#)*, 456 U.S. 694, 704 (1982).

15. Venue is also proper in this judicial district pursuant to the Agreement and the Defendants' contractual waiver of any venue objection. *See [United States ex rel. B D Mechanical Contractors, Inc. v. St. Paul Mercury Ins. Co.](#)*, 70 F.3d 1115, 1117 (10th Cir. 1995) ("It is well settled that venue provisions are subject to contractual waiver.").

### **BACKGROUND**

16. Plaintiff AGS is an innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis.

17. In connection with its exogenous ketones business, Plaintiff owns valuable trademark rights in its registered GOBHB® trademark. *See* Exhibit B. Plaintiff's distributors and licensees are permitted to use the GOBHB trademark in connection with their sale of products containing Plaintiff's ingredients. The GOBHB trademark serves as a symbol of Plaintiff's high-quality ingredients and is recognized by consumers. The GOBHB trademark is also used by unlicensed counterfeiters, who falsely label their products as containing Plaintiff's GOBHB Ingredients to illegally benefit from Plaintiff's goodwill and reputation in the GOBHB trademark.

18. The following counterfeit products are distributed by S.O Labs and sold by Defendant VAAD on Walmart.com under the dba “Precious Health Shops”:



<https://www.walmart.com/ip/Spark-Keto-Pills-Weight-Loss-Energy-Boosting-Dietary-Supplements-Management-Metabolism-Advanced-Ketogenic-Ketones-60-Capsules-1-Pack/180323039>

19. Defendant VAAD also sells the following S.O Labs counterfeit products on Amazon.com under the business name “Faber Goods”:



<https://www.amazon.com/Supreme-Capsules-Advanced-Formulation-Ketosis/dp/B096L7FWZT>

20. The counterfeit “Supreme Keto” products distributed by Defendants S.O Labs and VAAD do not contain Plaintiff’s GOBHB ingredients, are not authorized to use the GOBHB trademark, and on information and belief, cause confusion among consumers.

21. The “Spark Keto” products do not contain Plaintiff’s GOBHB ingredients. In addition to selling counterfeit products that do not contain Plaintiff’s GOBHB ingredients, the Defendants S.O Labs and VAAD falsely advertise that the products contain various forms of beta-hydroxybutyrate:

**Order now and give yourself a kick start to a healthier lifestyle.**

- **Effective Keto Pills:** Our Keto pills contain an appropriate blend of Magnesium Beta-Hydroxybutyrate, Calcium Beta-Hydroxybutyrate, and Sodium Beta-Hydroxybutyrate. Each serving contains 800mg of powerful ingredients.

<https://www.walmart.com/ip/Spark-Keto-Pills-Weight-Loss-Energy-Boosting-Dietary-Supplements-Management-Metabolism-Advanced-Ketogenic-Ketones-60-Capsules-1-Pack/180323039>

22. The Defendants' "Spark Keto" products do not contain any of the advertised forms of beta-hydroxybutyrate. The Defendant's "Spark Keto" products further advertise other benefits associated with the use of exogenous ketones in weight loss:

**About the Product:**

**Spark Keto Pills contain Ketones; these act as a cellular energy source and help your body to burn fat. The ingredients of these pills actively use fats instead of carbs to provide energy to your body throughout your day. These pills provide an energy boost for women & men alike to effectively support their weight loss goals.**

**Why choose us?**

**Our Keto pills help you to use excess fat within your body to produce energy. With the help of these pills, you'll be able to lose that excess weight that's been holding you down. Our pills make your diet plan easier, especially if you combine them with a proper Keto diet. S.O Labs Keto pills are perfect for men & women as they contain organic salts.**

<https://www.walmart.com/ip/Spark-Keto-Pills-Weight-Loss-Energy-Boosting-Dietary-Supplements-Management-Metabolism-Advanced-Ketogenic-Ketones-60-Capsules-1-Pack/180323039>

23. The Defendants' "Spark Keto" products do not contain exogenous ketones. However, the Defendants' "Spark Keto" Products purportedly contain an ingredient known as "raspberry ketones" which is found in red raspberries.





<b>SUPPLEMENT FACTS</b>		
<b>Serving Size: 2 Capsules</b>		
<b>Servings Per Container: 30 Servings</b>		
	<b>Amount Per Serving</b>	<b>%DV</b>
<b>Proprietary Ketosis Blend</b>	<b>435mg</b>	<b>**</b>
Sodium Chloride		
Garcinia Cambogia		
Mango Seed Powder		
Calcium Carbonate		
Magnesium Citrate		
Raspberry Ketones Extract		
<b>** Daily Value not established</b>		

<https://www.walmart.com/ip/Spark-Keto-Pills-Weight-Loss-Energy-Boosting-Dietary-Supplements-Management-Metabolism-Advanced-Ketogenic-Ketones-60-Capsules-1-Pack/180323039>

24. The Defendants market and sell these products as a “Proprietary Ketosis Blend” even though there is no indication that any of these products relate to sustaining or maintaining ketosis. In addition, Defendants sell the following products with the same ingredients and supplement panels that falsely claim that their ingredients provide enhanced “energy,” “exogenous ketones,” and allegedly promote ketosis:



<https://www.amazon.com/Ultra-Ketogenic-White-Ketosis-Supplement/dp/B09SYHR4XT>

(Brand: ARK Labs – Sold: Lanbri dba Online Great Deals)



<https://www.amazon.com/Ketosis-Advanced-Formula-Supplement-Pills/dp/B0B4HGB8F5>

(Brand: S.O Labs – Sold: VAAD Holdings dba Faber Goods)

25. The Exemplary Spark Keto, Ultra Keto White, and Ketosis Weight Loss Formula products are collectively referred to as the False Advertising Products.

26. There is no evidence that raspberry ketones support ketosis or weight loss; rather, supplementation studies have shown that raspberry ketone supplements have no effect on body mass or body composition. *E.g.*, Lynsey Johnston, *Effects of raspberry ketone and green coffee bean extract on body mass and substrate utilization* (2019) (unpublished MSc. thesis, University of Glasgow, available at <https://core.ac.uk/download/pdf/266981331.pdf>).

27. The benefit claims made by Defendants regarding the benefits of the ingredients in such products are false. An exemplary supplement facts panel is shown below.

<b>SUPPLEMENT FACTS</b>		
<b>Serving Size: 2 Capsules</b>		
<b>Servings Per Container: 30 Servings</b>		
	<b>Amount Per Serving</b>	<b>%DV</b>
<b>Proprietary Ketosis Blend</b>	<b>435mg</b>	<b>**</b>
Sodium Chloride		
Garcinia Cambogia		
Mango Seed Powder		
Calcium Carbonate		
Magnesium Citrate		
Raspberry Ketones Extract		
<b>** Daily Value not established</b>		

<https://www.walmart.com/ip/Spark-Keto-Pills-Weight-Loss-Energy-Boosting-Dietary-Supplements-Management-Metabolism-Advanced-Ketogenic-Ketones-60-Capsules-1-Pack/180323039>

28. In addition, among the Plaintiff's other innovations are the inventions claimed in the Asserted Patents, which are attached hereto as Exhibits C and D. The Asserted Patents describe and claim compositions for increasing blood ketone levels using various compositions of beta-hydroxybutyrate salts. The claimed compositions are useful in inducing and sustaining a state of nutritional ketosis. Ketosis is generally described in the Asserted Patents as follows:

“Ketosis” as used herein refers to a subject having blood ketone levels within the range of about 0.5 mmol/L and about 16 mmol/L in a subject. Ketosis may improve mitochondrial function, decrease reactive oxygen species production, reduce inflammation and increase the activity of neurotrophic factors.

'362 Patent, at 6:13-21, '403 Patent, at 6:13-18. Products that practice the inventions claimed in the Asserted Patents are sometimes referred to as “keto supplements.”

29. Defendants sell and have sold numerous keto supplement products, including the exogenous ketone supplements shown below, which practice the inventions of the Asserted Patents (the “Accused Products”).



#### Important information

##### Ingredients

800 mg of GoBHB Proprietary Blend - Sodium Beta Hydroxybutyrate, Magnesium Beta Hydroxybutyrate, Calcium Beta Hydroxybutyrate 800 mg of GoBHB Proprietary Blend - Sodium Beta Hydroxybutyrate, Magnesium Beta Hydroxybutyrate, Calcium Beta Hydroxybutyrate

##### Legal Disclaimer

Statements regarding dietary supplements have not been evaluated by the FDA and are not intended to diagnose, treat, cure, or prevent any disease or health condition.

<https://www.amazon.com/dp/B08ZSYXNCR>

(Brand: S.O Labs – Sold: Lightning Labs & Online Great Deals)

(Brand: S.O Labs – Sold: Lightning Labs dba Faber Goods)



<https://www.amazon.com/Complete-Capsules-Supplement-Ketogenic-Beginners/dp/B096L26VXH>

(Sold: VAAD Holdings dba Faber Goods)



<https://www.amazon.com/Lean-Time-Keto-Advanced-Formula/dp/B09JVFYJ9R>

(Brand: ARK Labs – Sold: Lanbri dba Online Great Deals)



<https://so-labs.net/products/3-pack-meticore>

(Brand: S.O Labs – Sold: Superior Quality Products)

30. Defendants describe the benefits of their keto supplements product as follows:  
(1) Pure & Patented Exogenous Ketones, (2) Achieve Ketosis More Efficiently, (3) Boosts Energy, Focus, and Clarity.

**FIRST CLAIM FOR RELIEF**  
**Trademark Infringement**  
**15 U.S.C. § 1114**

31. AGS incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

32. Section 32(1)(a) of the Lanham Act prohibits any person from using in commerce, without the consent of the registrant, any trademark or any reproduction, counterfeit, copy, or colorable imitation thereof in connection with the marketing, advertising, distribution, or sale of goods or services which is likely to result in confusion, mistake, or deception.

33. AGS is the owner of all rights in the GOBHB trademark, which are federally registered. *See* Exhibit B. The GOBHB trademark has acquired fame and distinctiveness and is associated in the mind of the public exclusively with AGS.

34. Defendants use the GOBHB trademark in connection with counterfeit products without AGS's consent or authorization. The Defendants' use, including the importation, sale, offer for sale, and/or distribution of their counterfeit products in commerce, is likely to cause confusion and mistake in the mind of the public, leading the public to believe that the Defendants' products emanate or originate from AGS or that AGS has approved, sponsored, or otherwise associated itself with Defendants or their counterfeit products.



35. Through the unauthorized use of the GOBHB trademark Defendants are unfairly benefiting from and misappropriating AGS's goodwill and reputation. This misappropriation has and continues to result in substantial and irreparable injury to the public and to AGS.

36. Defendants have actual and direct knowledge of AGS's prior use and ownership of the GOBHB trademark. The Defendants' conduct is willful and reflects Defendants' intent to exploit the goodwill and strong brand recognition associated with the GOBHB trademark.

37. Defendants' acts constitute trademark infringement and counterfeiting in violation of the Lanham Act.

38. Defendants' acts have caused, and will continue to cause, irreparable injury to AGS for which AGS has no adequate remedy at law. Consequently, AGS is entitled to injunctive relief. AGS has also been damaged in an amount not yet determined.

**SECOND CLAIM FOR RELIEF**

**Unfair Competition**

**15 U.S.C. § 1125(a)**

39. AGS incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

40. Section 43(a) of the Lanham Act prohibits any person from using in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to result in confusion, mistake, or deception.

41. The GOBHB trademark has acquired fame and distinctiveness and is associated in the mind of the public exclusively with AGS through its exclusive use for more than six years.

42. Defendants use the GOBHB trademark in connection with counterfeit products without AGS's consent or authorization. Defendants' use, including the importation, sale, offer for sale, and/or distribution of their counterfeit products in commerce, is likely to cause confusion and mistake in the mind of the public, leading the public to believe that Defendants' products emanate or originate from AGS or that AGS has approved, sponsored, or otherwise associated itself with Defendants or their counterfeit products.

43. Through the unauthorized use of the GOBHB trademark Defendants are unfairly benefiting from and misappropriating AGS's goodwill and reputation. This misappropriation has and continues to result in substantial and irreparable injury to the public and to AGS.

44. Defendants have actual and direct knowledge of AGS's prior use and ownership of the GOBHB trademark. Defendants' conduct is willful and reflects Defendants' intent to exploit the goodwill and strong brand recognition associated with the GOBHB trademark.

45. Defendants' acts constitute trademark infringement and counterfeiting in violation of the Lanham Act.

46. Defendants' acts have caused, and will continue to cause, irreparable injury to AGS for which AGS has no adequate remedy at law. Consequently, AGS is entitled to injunctive relief. AGS has also been damaged in an amount not yet determined.

**THIRD CLAIM FOR RELIEF**

**False Advertising  
15 U.S.C. § 1125(a)**

47. AGS incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.



48. Defendants have made false and misleading statements of fact about the False Advertising Products. Those statements misrepresent the nature, characteristics, and/or qualities of the False Advertising Products and are expressly false, impliedly false, or both. Defendants have misrepresented the benefits of the False Advertising Products. The False Advertising Products do not contain Ketones that “act as a cellular energy source and help your body to burn fat.” The False Advertising Products do not contain ingredients that “use fats instead of carbs to provide energy to your body throughout the day.” Nor do the False Advertising Products “provide an energy boost for women & men alike to effectively support their weight loss goals.” In fact, the False Advertising Products do not contain any of Plaintiff’s GOBHB ingredients, nor do they contain any form of beta-hydroxybutyrate, as shown in the exemplary test results below.

<u>Analysis</u>	<u>Method Reference</u>	<u>Result</u>	<u>Unit</u>	<u>Analysis Date</u>	<u>Approval Date</u>
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	None detected	%	04/19/2022	04/20/2022
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	None detected	mg/g	04/19/2022	04/20/2022
Calcium	BCAL-DV-AMP051	5.08	%	04/12/2022	04/20/2022
Calcium	BCAL-DV-AMP051	50.8	mg/g	04/12/2022	04/20/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	%	04/19/2022	04/20/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	mg/g	04/19/2022	04/20/2022
Magnesium	BCAL-DV-AMP051	0.376	%	04/12/2022	04/20/2022
Magnesium	BCAL-DV-AMP051	3.76	mg/g	04/12/2022	04/20/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	%	04/19/2022	04/20/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	mg/g	04/19/2022	04/20/2022
Sodium	BCAL-DV-AMP051	3.99	%	04/12/2022	04/20/2022
Sodium	BCAL-DV-AMP051	39.9	mg/g	04/12/2022	04/20/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	%	04/20/2022	04/20/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	0.00	mg/g	04/19/2022	04/20/2022

Exhibit E, BioChroma Analytical Labs, LLC test results  
for Exemplary Trim Life Keto 800MG BHB Product

49. Defendants have knowingly induced and/or caused third parties—including retailers—to engage in additional acts of false advertising by repeating Defendants’ false claims regarding the False Advertising Products.

50. Defendants knew or should have known that their advertising activities were false, misleading, and deceptive.

51. Defendants’ false and misleading statements have deceived and have the tendency to deceive a substantial segment of their intended audience about matters material to consumers’ purchasing decisions for the False Advertising Products that directly compete with Plaintiff’s products. Defendants’ violations have caused harm Plaintiff and to the public and, unless restrained, will further damage the public.

52. Defendants’ False Advertising Products are offered in interstate commerce, including on the Internet. Similarly, Defendants’ false and misleading statements were and are made in commercial advertising and promotion in interstate commerce.

53. Defendants’ violations have proximately harmed AGS. As a result of Defendants’ violations, AGS has suffered and will continue to suffer damage to its business and goodwill. AGS has and will lose sales and profits and incur increased advertising and marketing costs as a result of Defendants’ false advertising.

54. AGS’s immediate, irreparable injuries have no adequate remedy at law, and AGS is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants’ profits, as well as costs and reasonable attorney fees under 15 U.S.C. §§ 1116–17.

**FOURTH CLAIM FOR RELIEF**  
**Patent Infringement of U.S. Patent No. 11,020,362**  
**35 U.S.C. § 271**

55. Plaintiff incorporates all of the allegations of the preceding paragraphs as if fully set forth herein.

56. On June 1, 2021, the '362 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '362 Patent is attached as Exhibit C.

57. AGS is the owner of the '362 Patent.

58. Defendants make, uses, offers for sale, sells, and distributes the Accused Products.

59. Exemplary claim 1 of the '362 Patent is reproduced below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.

60. The Accused Products infringe at least claim 1 of the '362 Patent in the exemplary manner described below.

61. To the extent the preamble of claim 1 is limiting, the Accused Products meet the preamble of claim 1 as set forth below:

1. **A composition for increasing blood ketone level in a subject, comprising:**

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.



<https://www.amazon.com/Lean-Time-Keto-Advanced-Formula/dp/B09JVFYJ9R>

62. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

**at least three beta-hydroxybutyrate salts selected from:**

**sodium beta-hydroxybutyrate;**

**potassium beta-hydroxybutyrate;**

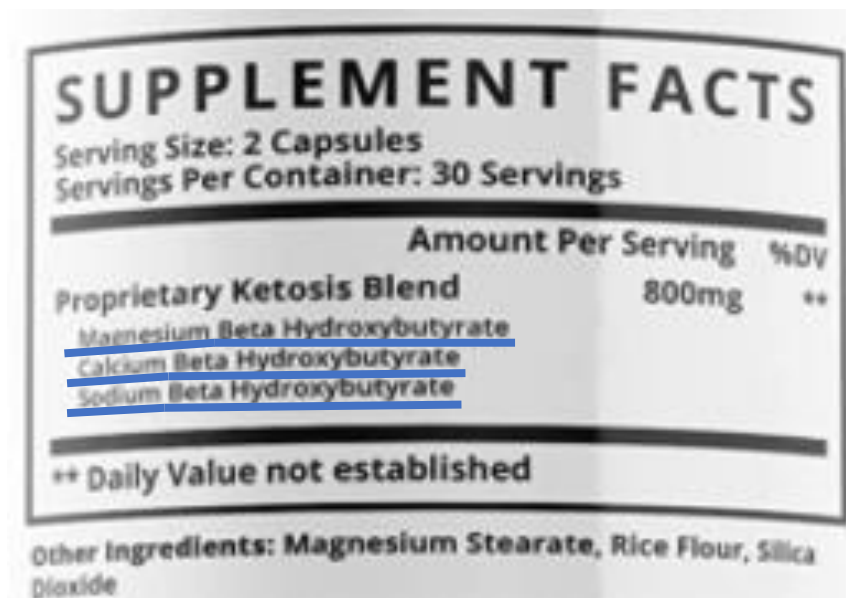
**calcium beta-hydroxybutyrate; and**

**magnesium beta-hydroxybutyrate;**

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.



<https://www.amazon.com/Lean-Time-Keto-Advanced-Formula/dp/B09JVFYJ9R>

63. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

**wherein the composition is in solid and/or powder form,**

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

'362 Patent, claim 1.



<https://www.amazon.com/Lean-Time-Keto-Advanced-Formula/dp/B09JVFYJ9R>

64. The Accused Products further meet the limitations of claim 1 as set forth below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

**wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.**

'362 Patent, claim 1.



<https://www.amazon.com/Lean-Time-Keto-Advanced-Formula/dp/B09JVFYJ9R>

65. Defendants have directly infringed claim 1 of the '362 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '362 Patent under 35 U.S.C. § 271(a).

66. Defendants are on notice of their direct and indirect infringement of the '362 Patent, having received written notice of their infringement from AGS regarding their infringement of the '362 Patent, by virtue of Plaintiff's marking of its products, and at least through the filing of this Complaint.

67. Defendants' acts of infringement have caused damage to Plaintiff. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount that is to be proven at trial.

68. Defendants have willfully infringed the '362 Patent with knowledge of the '362 Patent or were willfully blind to the '362 Patent and the risk of the Defendants' infringement.

**FIFTH CLAIM FOR RELIEF**  
**Patent Infringement of U.S. Patent No. 11,241,403**  
**35 U.S.C. § 271**

69. Plaintiff incorporates all of the allegations of the preceding paragraphs as if fully set forth herein.

70. On February 8, 2022, the '403 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '403 Patent is attached as Exhibit D.

71. AGS is the owner of the '403 Patent.

72. Defendants make, use, offer for sale, sell, and distribute the Accused Products



which practice the invention of the '403 Patent.

73. Exemplary claim 13 of the '403 Patent is reproduced below:

13. A composition for increasing blood ketone level in a subject,  
comprising:

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and

magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.

74. The Accused Products infringe at least claim 13 of the '403 Patent in the exemplary manner described below.

75. To the extent the preamble of claim 13 is limiting, the Accused Products meet the

preamble of claim 13 as set forth below:

13. **A composition for increasing blood ketone level in a subject, comprising:**

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and

magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.



<https://www.amazon.com/Shred-Keto-Advanced-Formula-Pills/dp/B09FFPSRST>  
(Available as of February 2022)

76. The Accused Products further meet the limitations of claim 13 as set forth below:

13. A composition for increasing blood ketone level in a subject,  
comprising:

**at least one beta-hydroxybutyrate salts selected from:**

**calcium beta-hydroxybutyrate; and**

**magnesium beta-hydroxybutyrate; and**

**at least one other beta-hydroxybutyrate salt selected from:**

**sodium beta-hydroxybutyrate;**

**potassium beta-hydroxybutyrate;**

**calcium beta-hydroxybutyrate;**

**magnesium beta-hydroxybutyrate; and**

**amino acid salts of beta-hydroxybutyrate,**

wherein the composition comprises a greater total weight of calcium and

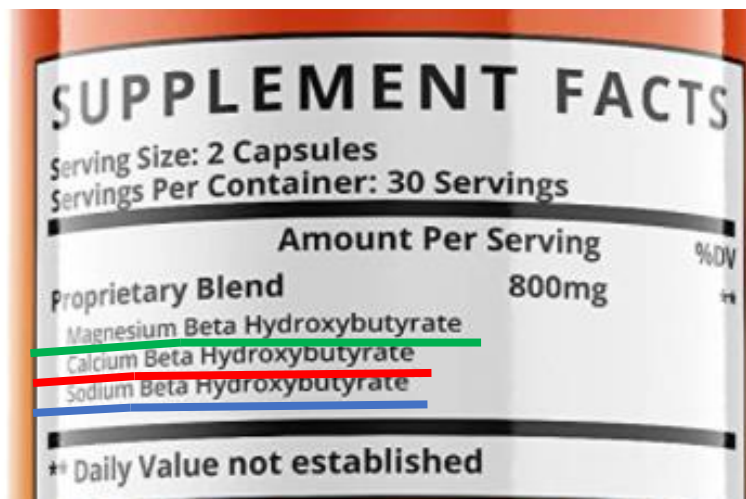
magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.



<https://www.amazon.com/Shred-Keto-Advanced-Formula-Pills/dp/B09FFPSRST>

(Available as of February 2022)

77. The Accused Products contain sodium beta-hydroxybutyrate, calcium beta-hydroxybutyrate; and magnesium beta-hydroxybutyrate as required by Claim 13, as shown in the analytical test results below:

<u>Analysis</u>	<u>Method Reference</u>	<u>Result</u>	<u>Unit</u>	<u>Analysis Date</u>	<u>Approval Date</u>
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	54.5	%	03/21/2022	03/21/2022
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	545	mg/g	03/21/2022	03/21/2022
Calcium	BCAL-DV-AMP051	9.61	%	03/16/2022	03/21/2022
Calcium	BCAL-DV-AMP051	96.1	mg/g	03/16/2022	03/21/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	59.1	%	03/22/2022	03/22/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	591	mg/g	03/22/2022	03/22/2022
Magnesium	BCAL-DV-AMP051	0.570	%	03/16/2022	03/21/2022
Magnesium	BCAL-DV-AMP051	5.70	mg/g	03/16/2022	03/21/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	5.41	%	03/22/2022	03/22/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	54.1	mg/g	03/22/2022	03/22/2022
Sodium	BCAL-DV-AMP051	0.844	%	03/16/2022	03/21/2022
Sodium	BCAL-DV-AMP051	8.44	mg/g	03/16/2022	03/21/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	4.61	%	03/22/2022	03/22/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	46.1	mg/g	03/22/2022	03/22/2022

Exhibit F, BioChroma Analytical Labs, LLC test  
results for Exemplary Accused EZ Shred Keto Product

78. The Accused Products further meet the limitations of claim 13 as set forth below:

13. A composition for increasing blood ketone level in a subject,

comprising:

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

**wherein the composition comprises a greater total weight of calcium**

**and magnesium beta-hydroxybutyrate salts than a total weight**

**of sodium and potassium beta-hydroxybutyrate salts,**

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

'403 Patent, claim 13.

<u>Analysis</u>	<u>Method Reference</u>	<u>Result</u>	<u>Unit</u>	<u>Analysis Date</u>	<u>Approval Date</u>
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	54.5	%	03/21/2022	03/21/2022
Beta-Hydroxybutyrate (BHB)	BCAL-DV-AMP052 HPLC	545	mg/g	03/21/2022	03/21/2022
Calcium	BCAL-DV-AMP051	9.61	%	03/16/2022	03/21/2022
Calcium	BCAL-DV-AMP051	96.1	mg/g	03/16/2022	03/21/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	59.1	%	03/22/2022	03/22/2022
Calcium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	591	mg/g	03/22/2022	03/22/2022
Magnesium	BCAL-DV-AMP051	0.570	%	03/16/2022	03/21/2022
Magnesium	BCAL-DV-AMP051	5.70	mg/g	03/16/2022	03/21/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	5.41	%	03/22/2022	03/22/2022
Magnesium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	54.1	mg/g	03/22/2022	03/22/2022
Sodium	BCAL-DV-AMP051	0.844	%	03/16/2022	03/21/2022
Sodium	BCAL-DV-AMP051	8.44	mg/g	03/16/2022	03/21/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	4.61	%	03/22/2022	03/22/2022
Sodium 3-Hydroxybutyrate salt	BCAL-DV-AMP051 and BCAL-DV-AMP052	46.1	mg/g	03/22/2022	03/22/2022

Exhibit F, BioChroma Analytical Labs, LLC test

results for Exemplary Accused EZ Shred Keto Product

79. The Accused Products further meet the limitations of claim 13 as set forth below:

13. A composition for increasing blood ketone level in a subject,  
comprising:

at least one beta-hydroxybutyrate salts selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the composition comprises a greater total weight of calcium and

magnesium beta-hydroxybutyrate salts than a total weight of sodium

and potassium beta-hydroxybutyrate salts,

**wherein the composition is free of medium chain fatty acids having  
6 to 12 carbons and glycerides or other esters thereof.**

'403 Patent, claim 13.



<https://www.amazon.com/Shred-Keto-Advanced-Formula-Pills/dp/B09FFPSRST>

(Available as of February 2022)

80. Defendants have directly infringed claim 13 of the '403 Patent in the United States by making, using, offering for sale, selling, and/or importing the Accused Products in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for their infringement of the '403 Patent under 35 U.S.C. § 271(a).



81. Defendants are on notice of their direct and indirect infringement of the '403 Patent by virtue of Plaintiff's marking of its products and at least by the filing of this Complaint.

82. Defendants' acts of infringement have caused damage to Plaintiff. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount that is to be proven at trial.

83. Defendants have willfully infringed the '403 Patent with knowledge of the '403 Patent or were willfully blind to the '403 Patent and the risk of the Defendants' infringement.

**SIXTH CLAIM FOR RELIEF**  
**Breach of Contract**

84. Plaintiff incorporates all of the allegations of the preceding paragraphs as if fully set forth herein.

85. Pursuant to the terms of the Agreement, dated December 17, 2021, the Defendants agreed to the following terms:

**2.2 No Future BHB Sales.** Seller agrees on behalf of itself and its Affiliates that it will immediately and forever stop the sale of any and all products sold at the ASINs identified on Exhibit A and that Seller will not in the future, sell any product containing beta-hydroxybutyrate that infringes the '362 Patent or any other patent owned, exclusively licensed, or controlled by AGS or its Affiliates.

Agreement §2.2.

86. Almost immediately after signing the Agreement, the Defendants breached the Agreement by continuing to sell the Accused Products. On January 12, 2022, AGS provided notice of breach of the Agreement as required by Section 2.5 of the Agreement. *See* Exhibit G. Thereafter, the Defendants continued to breach the Agreement by selling the Accused Products. On March 2, 2022, AGS again provided notice of breach of the Agreement as required by Section

2.5 of the Agreement. *See* Exhibit H.

87. As of the filing of this Complaint, the Defendants continue to breach the Agreement through their sale of Accused Products in violation of Section 2.2 of the Agreement. The Accused Products infringe at least the claims of the '362 Patent and the '403 Patent.

88. The Defendants' sale of the Accused Products is in breach of Section 2.2 of the Agreement.

89. The Plaintiff has been damaged by the Defendants' breach of the Agreement and the Defendants' failure to immediately and forever stop the sale of the Accused Products.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendant:

A. A judgment that the Defendants have infringed the registered GOBHB trademarks and engaged in trademark counterfeiting;

B. A judgment that the Defendants have willfully infringed the GOBHB trademarks;

C. A judgment that the Defendants have engaged in false advertising related to the False Advertising Products;

D. An order and judgment enjoining the Defendants and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from infringing the registered GOBHB trademarks; for the destruction of any infringing articles; and for reasonable funds for corrective advertising to correct the Defendants' misleading association with Plaintiff AGS;

E. An award of damages in an amount to be determined at trial or statutory damages for trademark counterfeiting together with an accounting of Defendants' profits and costs of the action pursuant to 15 U.S.C. § 1117;

F. Any other remedy to which AGS may be entitled, including all remedies provided for in 15 U.S.C. § 1117 et seq.;

G. A judgment trebling damages pursuant to 15 U.S.C. § 1117;

H. A judgment that this is an exceptional case, pursuant to 15 U.S.C. § 1117 with an award of Plaintiff's reasonable attorneys' fees;

I. A judgment that Defendants have infringed one or more claims of the Asserted Patents literally and/or under the doctrine of equivalents;

J. An award of damages pursuant to 35 U.S.C. § 284;

K. Entry of an injunction against further infringement of the Asserted Patents;

L. A judgment that this is an exceptional case pursuant to 35 U.S.C. § 285 and an award of the Plaintiff's reasonable attorneys' fees in this litigation;

M. An award of actual damages from the Defendants for their breach of the Agreement, including general and consequential damages, in an amount according to the proof;

N. An award of prejudgment and post-judgment interest on its damages;

O. An award of costs; and

P. Any such other and further relief as the Court deems proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all matters triable to a jury.

DATED this 20<sup>th</sup> day of March, 2023.

Respectfully submitted,

WORKMAN NYDEGGER

By: /s/ Brian N. Platt

BRIAN N. PLATT

CHAD E. NYDEGGER

*Attorneys for Plaintiff Axcress Global  
Sciences, LLC*